



COUNTY OF SISKIYOU
OFFICE OF THE DISTRICT ATTORNEY

J. KIRK ANDRUS, DISTRICT ATTORNEY

RECEIVED

AUG 27 2009

SUPERIOR COURT

August 26, 2009

Honorable Laura Masunaga
Presiding Judge
Siskiyou County Superior Court

RE: Response of the District Attorney requested by the 2008/2009 Grand Jury

Your Honor,

Pursuant to Penal Code § 933.05, the Office of the District Attorney submits the following responses as requested by the 2006/2007 Siskiyou County Grand Jury.

1. **RAILROAD SETTLEMENT MONEY**: The Grand Jury has recommended that:
 - a. The Board of Supervisors authorize a committee under County Counsel in the event of accounting grievances,
 - b. The District Attorney's Office should seek additional training in the procedures for processing settlements, fines and restitutions, and in the use of Banner—with the Auditor providing the training.
 - c. That no more time be spent on any prior settlements such as this one, and
 - d. All prior distributions of the \$176,200 proceeds from this case should be accepted.

The District Attorney agrees with in part with the recommendation and disagrees in part.

Though asked to respond, the District Attorney cannot implement formation of a committee under the County Counsel's office. Depending upon the constitution of such a committee and what authority they may possess, it may be a very good suggestion.

The District Attorney's Office constantly seeks training in these areas. However, the more appropriate suggestion would be to find the proper approach for such distributions under specified codes and then come to an agreement with the Auditor's Office as to how future proceeds will be administered consistent with those procedures—and to restore any past improperly distributed funds.

As District Attorney, I disagree that no more time should be spent on old settlements. At a time when employees are being laid off work, including six who were given their notice in this department in the last three months, the decision to ignore funds which may otherwise be available for this department's use is untenable.

As District Attorney, I disagree that prior distributions of the \$176,200 should be accepted, at least where they are found to have been wrongly distributed. Accepting errors for the sake of convenience is the wrong approach. This is not a simple problem. The Grand Jury acknowledges that it did not receive all of the information necessary to solve this problem. It is unfortunate that the Grand Jury did not complete this investigation. However, that is no reason to drop the matter, especially it seems to have boiled down to a simple inquiry—whether the case originating the fines may be identified and documented.

The most important point in this inquiry should be: was the distribution done properly and lawfully. A secondary point is: are there monies in accounts that are unused or unaccounted for. The most important data is likely: how do we avoid these problems in the future, i.e., what accounts should be created, under what authority, and where should future monies go which are distributed as a result of litigation.

As District Attorney, I simply want to see this matter resolved truthfully and lawfully. This Railroad case was litigated, and the funds distributed, long before I took office. A very important element of the matter is to see that the county does not repeat this situation in future cases.

2. **INEFFECTIVE GOVERNMENT:** The Grand Jury has requested a response to a subjective finding regarding supposed gossip, collusion and “undermining conduct”—apparently between county departments—that they termed “unacceptable.” They requested a response to a recommendation regarding the County Administrative Officer who, they opined, should require mature conduct, respectful language, and cooperation.

The District Attorney lacks sufficient information on the recommendation.

The recommendation will not be implemented. The District Attorney cannot dictate what the CAO “should require.” While I agree in general with the Grand Jury’s sentiments regarding proper conduct, no information has been provided regarding who engaged in this conduct and whether it was warranted under the circumstances.

- The grand jury alluded to “interdepartmental gossip.” With no further explanation it is impossible to comment on this statement.
- The grand jury alluded to “collusion,” with no additional detail. This is a serious allegation. Collusion is generally understood to mean a secret

agreement or conspiracy for a fraudulent, treacherous and illegal purpose. If the grand jury stands by this allegation, it would be irresponsible not to report the observed conduct to a law enforcement agency.

- The grand jury alluded to “undermining conduct,” with no additional detail regarding who was undermined, how they were undermined, or whether it was warranted under the circumstances. It is impossible to respond to such subjective musings.

3. **FISH AND GAME MONEY MISSING:** The Grand Jury has requested a response to finding and recommendations 1 through 10.

The District Attorney agrees in part with the recommendations.

The recommendations require further analysis. The District Attorney and the Auditor continue to meet and confer on this issue. The Auditor has submitted an audit of the applicable account. My office is currently reviewing the audit for accuracy and areas of agreement. This matter should be prepared for discussion within three (3) months.

The tenor of the grand jury report seems to suggest an adversarial posture in this matter. When I arrived in office in April, 2005, these funds were the subject of a very early location effort. We are virtually no farther down that path in August, 2009. I do not have sufficient information to ascertain whether the former District Attorney set up proper accounting procedures or not, or whether these were qualifying cases or not. If the Department of Fish and Game is owed monies, they should be paid. If not, we can go forward and ideally have funds from such cases distributed appropriately in the future.

Thank you for the opportunity to respond and for the work of the 2008/2009 Siskiyou County Grand Jury.

Very Truly Yours,



THE HONORABLE J. KIRK ANDRUS
SISKIYOU COUNTY DISTRICT ATTORNEY